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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1967

No. 1073

ELDON O. HALDANE,

Petitioner,

vs.

WILHELMINA HELEN KING CHAGNON;
HORACE N. FREEDMAN;
LEONARD S. SANDS;
GORDON THOMPSON;
WILFRED H. TOMLIN;
ALBERT D. MATTHEWS,

Respondents.

PETITION TO THE UNITED STATES SUPREME COURT FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

ELDON O. HALDANE
601 South Vermont Avenue
Los Angeles, California

Petitioner Pro Se

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PETITION TO THE UNITED STATES SUPREME COURT FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

Petitioner prays that a Writ of Certiorari issue to review the judgment of the United States Court of Appeals for the Ninth Circuit, entered in the above-entitled case on December 15, 1967.

CITATIONS TO OPINIONS BELOW

The memorandum opinion of the Circuit Court of Appeals is unreported and is printed in Appendix B hereto. Since that dismissal was based on Haldane v. Chagnon, reported in 345 F. 2d 601, said opinion is likewise printed in Appendix C hereto. The initial District Court opinion entered May 12, 1961, is printed in Appendix D hereto.

JURISDICTION

The judgment of the Circuit Court of Appeals was entered on December 15, 1967. The jurisdiction of this Court is invoked under 28 USC §1254 (1). The jurisdiction of the District Court was invoked under 28 USC §§1331 and 1343.

QUESTION PRESENTED

Whether state employee deputy sheriffs, clerks, judges, and private attorneys, acting in concert wholly without jurisdiction of the subject matter, may all claim absolute judicial immunity to seize petitioner at gun point, falsely imprison him, destroy his livelihood and federally guaranteed civil rights.

STATUTES INVOLVED

The statutory provisions involved are 42 USC 1983, Appendix A, infra, p. A-1, 42 USC 1985 (2) (3), Appendix A, infra, p. A-1 - A-3, 42 USC 1988, Appendix A, infra, p. A-3, 18 USC 241, 242, Appendix A, infra, pp. A-4, A-5, and Sections 5041, 5047, 5050 and 5050.3 of the Welfare & Institutions Code of California, Appencix A, infra, pp. A-5 to A-9.

STATEMENT

A purported divorce action was filed against petitioner and vigorously defended as groundless and sham; he was falsely and separately attacked as mentally ill for highly improper purpose (R. 10-15 inclusive) and state judges were consulted by respondents in privacy and secrecy, falsely told that petitioner was violent and dangerous (R. 4, lines 1-32) deputy sheriff Tomlin, who had never seen petitioner, ordered to execute a void "petition" and void "affidavit" to accomplish petitioner's false imprisonment without bail, destruction of his earnings, immolation of home and family (R. 5, 6, 7, 8, 9). R. 10-15 inclusive sets forth the absolutely void "petition," arbitrary order of imprisonment, (R. 11,) medical reports (R. 13, 14) dismissal of mental illness

or insanity charges (R. 15). The fatally defective void "petition" (R. 10-15) is the heart of the case.

CONSTITUTIONAL PROVISIONS INVOLVED

The Constitution provides in part as follows:

FOURTH AMENDMENT

"The right of the people to be secure in their persons . . . against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation ..."

FIFTH AMENDMENT

". . . nor be deprived of life, liberty, or property, without due process of law..."

SIXTH AMENDMENT

". . . to be confronted with the witnesses against him ..."

EIGHTH AMENDMENT

"Excessive bail shall not be required."

FOURTEENTH AMENDMENT

"No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

REASONS FOR GRANTING WRIT

The decisions of the court below in the instant case and in Haldane v. Chagnon, 345 F. 2d 601 (1965) (Appendix B and C infra) are directly and irreconcilably in conflict with Baxstrom v. Herold, 383 US 107, 111 (1966), Bradley v. Fisher, 13 Wall. (80 US) 335, 351-352 (1871), Jillson v. Caprio, 181 F. 2d 523 (D.C. App.), Manning v. Ketcham, 58 F. 2d 948 (6 Cir.), Maben v. Rankin, 55 Cal. 2d 139, In re Raner, 59 Cal. 2d 635, 639, and Warner v. New York, 297 NY 395. The void "petition" (R. 10-15 inclusive) although alleged to be civil in form is in its nature criminal and punitive, can when successful result in life imprisonment. Section 5047 Welfare & Institutions Code (Appendix A infra, p. A-5) requires verification and it is distinctly alleged that Tomlin had never seen petitioner in his entire life, knew nothing about petitioner (R. 3, lines 1-3). Section 5050, Welfare & Institutions Code

(Appendix A infra, p. A-6) requires a physician's certificate dated not more than 3 days prior to presentation of the petition and filed with the court, certifying that he has examined the person and is of the opinion that the person is mentally ill .... No such preconfinement examination was ever made; no such certificate was issued or filed. The arrest order (R. 11) by a state judge was not legal in any sense, but was a clearly arbitrary order in violation of the Fourth Amendment, not on oath, but on hearsay. Such special proceedings are in derogation of the common law, governed strictly by statute, and personal observation under §5050.3 Welfare & Institutions Code, (Appendix A infra, p. A-8), plus the officer or physician's written certification that the person is mentally ill and because of his illness is likely to injure himself or others if not immediately hospitalized. The state court's jurisdiction of all proceedings was lost on March 8, 1961 (R. 6, lines 7-17) authority In re Los Angeles County Pioneer Society, 217 F.2d 190, 194, citing Supreme Court decisions. Also cf. Ex parte Virginia, 100 US 339, 346-347, United States v. Guest, 383 US 745, United States v. Price, 383 US 787. The 1965 and 1967 cases of Haldane v. Chagnon et al are dissimilar as to parties and facts, were never determined on the merits. See Pierson v. Ray, 386 US 547, 18 L.Ed.2d 288, April 11, 1967 (both opinions).

The respondents were not engaged in judicial acts, but acts in violation of 18 USC 241, 242 (Appendix A infra, pp. A-4, A-5).

Death claimed petitioner's attorney shortly after March 8, 1961; appointment of capable counsel is respectfully requested authority United States v. Madden, 352 F.2d 792 (1), the circumstances being exceptional, said attorney to be paid pursuant Sprague v. Ticonic National Bank, 307 US 161, 167, the legal liability being strict and absolute. Cf. Bottone v. Lindsley, 170 F.2d 705 (7); Kennedy v. Mendoza-Martinez, 372 US 144, 145.

The Constitution of the United States is the real proponent before this Court.

Void "petition" (R. 10-15 inclusive) charged no criminal or civil offense, no contempt direct or indirect, no scintilla of evidence to constitute any special proceeding known to the law.

> "The public welfare demands that the agencies of public justice be not so impotent that they must always be mute and helpless victims of deception and fraud."
>
> Hazel-Atlas Co. v. Hartford Co., 322 US 238, 246;

Root Refining Co. v. Universal Oil Products,
169 F.2d 514, 541.

CONCLUSION

For the foregoing reasons, this petition for a Writ of Certiorari should be granted.

Respectfully submitted,

ELDON O. HALDANE

Petitioner Pro Se

Dated: January 31, 1968

APPENDIX A

(Statutory Provisions Cited and Quoted)

TITLE 42 U.S.C.

§ 1983. Civil action for deprivation of rights.

Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress. R.S. §1979.

CIVIL RIGHTS 42 § 1985

Obstructing justice; intimidating party, witness, or juror

(2) If two or more persons in any State or Territory conspire to deter, by force, intimidation, or threat, any party or witness in any court of the United States from attending such court, or from testifying to any matter pending therein, freely, fully, and truthfully, or to injure such party or witness in his person or property on account of his having so attended

or testified, or to influence the verdict, presentment, or indictment of any grand or petit juror in any such court, or to injure such juror in his person or property on account of any verdict, presentment, or indictment lawfully assented to by him, or of his being or having been such juror; or if two or more persons conspire for the purpose of impeding, hindering, obstructing, or defeating, in any manner, the due course of justice in any State or Territory, with intent to deny to any citizen the equal protection of the laws, or to injure him or his property for lawfully enforcing, or attempting to enforce, the right of any person, or class of persons, to the equal protection of the laws;

Depriving persons of rights or privileges

(3) If two or more persons in any State or Territory conspire or go in disguise on the highway or on the premises of another, for the purpose of depriving, either directly or indirectly, any person or class of persons of the equal protection of the laws, or of equal privileges and immunities under the laws; or for the purpose of preventing or hindering the constituted authorities of any State or Territory from giving or securing to all persons within such State or Territory the equal protection of the laws; or if two or more persons conspire to prevent by force, intimidation, or threat, any citizen who is lawfully

entitled to vote, from giving his support or advocacy in a legal manner, toward or in favor of the election of any lawfully qualified person as an elector for President or Vice President, or as a Member of Congress of the United States; or to injure any citizen in person or property on account of such support or advocacy; in any case of conspiracy set forth in this section, if one or more persons engaged therein do, or cause to be done, any act in furtherance of the object of such conspiracy, whereby another is injured in his person or property, or deprived of having and exercising any right or privilege of a citizen of the United States, the party so injured or deprived may have an action for the recovery of damages, occasioned by such injury or deprivation, against any one or more of the conspirators. R.S. §1980.

TITLE 42 U.S.C.

§ 1988. Proceedings in Vindication of Civil rights

The jurisdiction in civil and criminal matters conferred on the district courts by the provisions of this chapter and Title 18, for the protection of all persons in the United States in their civil rights, and for their vindication, shall be exercised and enforced in conformity with the laws of the United States, so far as such laws are suitable to carry the same into effect; but in all cases where they are not adapted to the object, or are deficient in the

provisions necessary to furnish suitable remedies and punish offenses against law, the common law, as modified and changed by the constitution and statutes of the State wherein the court having jurisdiction of such civil or criminal cause is held, so far as the same is not inconsistent with the Constitution and laws of the United States, shall be extended to and govern the said courts in the trial and disposition of the cause, and, if it is of a criminal nature, in the infliction of punishment on the party found guilty. R.S. § 722.

TITLE 18 U.S.C.

§ 241. Conspiracy against rights of citizens

If two or more persons conspire to injure, oppress, threaten, or intimidate any citizen in the free exercise or enjoyment of any right or privilege secured to him by the Constitution or laws of the United States, or because of his having so exercised the same; or

If two or more persons go in disguise on the highway, or on the premises of another, with intent to prevent or hinder his free exercise or enjoyment of any right or privilege so secured --

They shall be fined not more than $5,000 or imprisoned not more than ten years, or both.

§ 242. Deprivation of rights under color of law

Whoever, under color of any law, statute, ordinance, regulation, or custom, willfuly subjects any inhabitant of any State, Territory, or District to the deprivation of any rights, privileges, or immunities secured or protected by the Constitution or laws of the United States, or to different punishments, pains, or penalties, on account of such inhabitant being an alien, or by reason of his color, or race, than are prescribed for the punishment of citizens, shall be fined not more than $1,000 or imprisoned not more than one year, or both.

CALIFORNIA
WELFARE & INSTITUTIONS CODE

(Ch. 1, Art. 3, Mentally Ill and Insane Persons)

§5041. "Insane" or variants of term. Wherever in this code the term "insane" or its variants are used, such terms shall be construed to refer to and mean "mentally ill" or its variants, as defined in this article.

§ 5047. Petition for examination of mentally ill person: Who may file: Preparation of petition and forms: Civil and criminal liability. Any person may file in the superior court a verified petition, alleging that there is in the county a person who is mentally ill and

in need of supervision, care, or treatment, and asking that examination be made of the mental health of the person, and that provision be made for the welfare of the person as provided in this chapter.

When no relative, friend, or other person can be found in the county who is able and willing to make and file the petition herein provided, any peace officer, probation officer, physician attending the patient, physician attached to a public hospital or institution, if the person is a patient therein, or public guardian may make and file the petition herein provided. The district attorney or his deputy shall prepare the petition and all other forms required in the proceeding when requested by the party who is to file the petition.

§ 5050. Orders for examination and safekeeping: Appointment of medical examiners: Service. Whenever it appears, by petition pursuant to this chapter, to the satisfaction of a judge of the superior court in any county that any person therein is mentally ill, and in need of supervision, treatment, care or restraint the judge shall so far as consistent with Section 5156 of this code, make such orders as may be necessary to provide for examination into the state of mental health of the person, and for the safekeeping, necessary medical treatment, care or restraint of the person, pending hearing, in the county psychopathic

hospital, in his own home, in a state hospital, or in such other place as will afford access to medical examiners for the purpose of examination and suitable provision for the safety and comfort of the person. The judge shall by order appoint two medical examiners for the purpose of examination and suitable provision for the safety and comfort of the person. The judge shall by order appoint two medical examiners to make a personal examination of the person and to report thereon to the court.

If the judge is satisfied that the person is sufficiently mentally ill that examination should be made into the state of his mental health, the judge shall issue an order notifying the person to submit to examination at such time and place as designated by the judge. The order for examination shall be served as provided in Section 5050.2 by a peace officer or counselor in mental health of the county at least one day before the time fixed for the examination. The person shall be permitted to remain in his home or other place of domicile pending the examination, and shall be permitted to be accompanied by one or more of his relatives or friends to the place of examination.

If it appears to the judge from a certificate of a licensed physician and surgeon dated not more than three (3) days prior to the presentation of the petition and filed with the court, certifying that he has examined the

person and is of the opinion the person is mentally ill, and because of his illness is likely to injure himself or others if not immediately hospitalized or detained, or if it otherwise affirmatively appears that said person is likely to injure himself or others, the judge may issue and deliver to a peace officer or counselor in mental health of the county an order directing that the person be forthwith detained in a place designated in the order for examination and hearing as provided in this chapter. The judge may issue a similar order if the person fails or refuses to appear for examination when notified.

§5050.3. Emergency apprehension: Detention permissible: Contents of application: Period of permissible detention. When any person becomes so mentally ill as to be likely to cause injury to himself or others and to require immediate care, treatment, or restraint, a peace officer, health officer, county physician or assistant county physician, who has reasonable cause to believe that such is the case, may take the person into custody for his best interest and protection and place him as provided in this section. The person believed to be mentally ill may be admitted and detained in the quarters provided in any county hospital or state hospital upon application of the peace officer, health officer, county physician, or assistant county physician. The application shall be in writing and shall state the circumstances under which the person's

condition was called to the officer's or physician's attention and shall also state that the officer or physician believes, as a result of his personal observation, that the person is mentally ill and because of his illness is likely to injure himself or others if not immediately hospitalized.

The superintendent or physician in charge of the quarters provided in such county hospital or state hospital may care for and treat the person for a period not to exceed seventy-two (72) hours, excluding Saturdays, Sundays, and holidays. Within that seventy-two (72) hours the person shall be discharged from the institution unless a petition of mental illness is presented to a judge of the superior court and the court issues an order for detention of such person, or unless the person is admitted as a patient under any other provision of law.

APPENDIX B

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

ELDON O. HALDANE, Appellant

v. No. 21,567

WILHELMINA HELEN KING GHAGNON et al

Appellees

Appeal from the United States District Court for the Central District of California

Before: CHAMBERS and BROWNING, Circuit Judges, and MCNICHOLS, District Judge

PER CURIAM:

The district court's order dismissing with prejudice appellant's complaint for damages under the Civil Rights Act, 42 USC 1985 (3) was required by this court's ruling in Haldane v. Chagnon, 345 F.2d 601 (9th Cir. 1965). That decision binds this panel. The judgment is affirmed.

/s/ James B. Browning
United States Circuit
Judge

Dec. 15, 1967

HALDANE v. CHAGNON

No. 21567

MEMORANDUM TO CLERK LUCK:

All Judges concerned having concurred in the within opinion, the Clerk will please file.

/s/ James R. Browning
Circuit Judge

APPENDIX C

HALDANE v. CHAGNON
Cite as 345 F. 2d 601 (1965)

Eldon O. HALDANE, Appellant,

v.

Wilhelmina Helen King CHAGNON, Horace N. Freedman, Lloyd S. Nix, Allen Miller, Wilfred H. Tomlin, Appellees.

No. 19370.

United States Court of Appeals
Ninth Circuit.
May 5, 1965.

Rehearing Denied June 3, 1965.

Action by litigant against judges, attorney and bailiff for damages under Civil Rights Act. The United States District Court for the Southern District of California, Central Division, Charles H. Carr, J., entered an order dismissing action and the litigant appealed. The Court of Appeals, Ely, Circuit Judge, held that the two judges, and the bailiff who had acted at direction of one judge in signing petition, were immune

from liability for acts in initiating and authorizing detention proceedings, and attorneys in divorce action who were consulted by the judge who initiated proceedings were not liable since they had not acted in conspiracy with a state officer against whom litigant could state a valid claim.

Affirmed.

1. Courts -- 405(14.7)

If order of dismissal of suit had run in favor of two of the five defendants only, leaving matter pending as to three other defendants, appeal from order would have been premature.

2. Courts -- 405(3.9)

Since alleged cause of action was dismissed in favor of all the five defendants, thus having effect of terminating litigation in court below, order of dismissal was appealable.

3. Federal Civil Procedure -- 1773

Complaint is not subject to dismissal on ground that there is failure to state a claim upon which relief can be granted unless it appears beyond doubt that plaintiff can prove no set of facts in support of his claim which would entitle him to relief.

4. Civil Rights -- 1

Only elements which need be present to establish claim for damages under Civil Rights Act are that the conduct complained of was engaged in under color of state law and that the conduct subjected plaintiff to deprivation of rights, privileges, or immunities secured by Federal Constitution. 42 U.S.C.A. §§1981-1988.

5. Judges -- 36

Judges are immune from civil liability for acts done in the course of their official actions.

6. Civil Rights -- 13

Doctrine of judicial immunity from civil liability for acts done in course of official functions is operative in acts grounded on Civil Rights Act. 42 U.S.C.A. 221981-1988.

7. Judges -- 36

Judge acting in his capacity as a private citizen and divorcing himself from his judicial duties may cast aside his cloak of immunity.

8. Civil Rights -- 13

Judge who was hearing divorce action and initiated steps for husband's detention under California statutes for observation as to mental health and judge who granted authority for the detention and observation under court supervision were immune from

any alleged liability to husband under Civil Rights Act in husband's suit, as was court bailiff who had acted at direction of judge in preparing and signing necessary petition. 42 U.S.C.A. §§1981-1988; West's Ann. Cal. Welfare & Inst. Code, §§5047-5049.

9. Civil Rights -- 3

Attorneys who appeared in divorce action and who were consulted by judge who then initiated proceedings to detain husband for observation as to his mental health had not acted in conspiracy with state officer against whom husband could state a valid claim and had not committed any wrongful acts which would subject them to liability under Civil Rights Act. 42 U.S.C.A. §§ 1981-1988; West's Ann. Cal. Welfare & Inst. Code, §§5047-5049.

Eldon O. Haldane, Los Angeles, Cal., in pro. per.

Joseph W. Jarrett, Los Angeles, Cal., for appellee, Chagnon.

Donald E. Ruppe, Crider, Tilson & Ruppe, Los Angeles, Cal., for appellee, Freedman.

Before MERRILL, DUNIWAY and ELY, Circuit Judges.

ELY, Circuit Judge:

This appeal is from an Order of Dismissal. Appellant, plaintiff below, sought damages in excess of ten million dollars from two licensed California attorneys, two judges of the Superior Court of California, and the bailiff of one of the judges. He attempted to ground his action upon the Civil Rights Act, 42 U.S.C. §§1981-1988, and in one paragraph of his complaint alleged, in effect, and in general terms, that the five defendants illegally and maliciously conspired to deprive him of various constitutional rights. From other portions of the complaint and from several documents attached thereto as an exhibit and wholly "incorporated by reference," we gain more detailed information as to circumstances giving rise to the action.

It appears that appellant was a party to a divorce action in the state court, representing himself in propria persona. During the trial of this suit before one of the defendant judges, Nix, the conduct of appellant caused the judge to confer with the two defendant-appellee attorneys and, shortly thereafter, to direct his defendant bailiff to complete and file a printed form of petition which, under California Law,[1] prayed, with respect to

1. California Welfare and Institutions Code, Secs. 5047, 5048, 5049.

plaintiff-appellant, "that examination be made to determine the state of mental health of said person alleged to be mentally ill, and that such measures be taken for the best interest and protection of said person, in respect to supervision, care or treatment, as may be necessary and provided by law." The petition was presented to the second defendant judge, one Miller, who was regularly assigned for the judicial supervision of such matters. Judge Miller promptly signed a so-called "Order For Detention" which called for appellant's detention and examination and which resulted, forthwith, in appellant's being taken into custody and hospitalized. The order also designated two physicians to observe appellant and make report as to whether or not his condition did, in their opinion, require continued detention and treatment.

The appointed physicians reported that the appellant was in no such need, so that approximately two days after he was taken into custody, he was released.[2]

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[2] While both physicians expressed their medical opinions that the condition of appellant's mental health was not such as to require treatment under continued hospital confinement, both of them noted observations as to appellant's abnormality. One of the reports read, in part, "Has severe hypertension. * * * Judgment is quite defective. Insight poor." The report of

Following service upon the defendant attorneys, they moved to dismiss the purported cause of action as against them, and following a hearing, the trial court entered an Order of Dismissal as to all five defendants. There was no appearance by the defendant judges and defendant bailiff, and the record before us does not reveal whether or not they have ever been served.

[1, 2] Had the Order of Dismissal run in favor of the two appearing defendants only, leaving the matter pending as to other defendants, the present appeal would have been premature. Richardson v. United States, 336 F. 2d 265 (9th Cir. 1964), Miles v. City of Chandler, 297 F. 2d 690 (9th Cir. 1961). Since the alleged cause of action was dismissed in favor of all defendants, thus having the effect of terminating the litigation in the court below, the Order of Dismissal is appealable.

[3, 4] We believe, also, that the Order of Dismissal was properly made. In reaching this conclusion, we have not

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2 (continued from page C-6)

the other physician mentions a "stroke" suffered by appellant in 1959 and continues "This man presents symptoms physically & mentally which are in conformity to a C. V. A. Undoubtedly there has been some irritability & loss of judgment, ***."

overlooked the rule that a complaint is not subject to dismissal on the ground that there is a failure to state a claim upon which relief can be granted "unless it appears beyond doubt that the plaintiff can prove no set of facts in support of his claim which would entitle him to relief." Conley v. Gibson, 1957, 355 U.S. 41, 45-46, 78 S.Ct. 99, 101-102, 2 L.Ed.2d 80, York v. Story, 324 F.2d 450, 453 (9th Cir. 1963), Marshall v. Sawyer, 301 F.2d 639, 647 (9th Cir. 1962), Cohen v. Norris, 300 F.2d 24, 31 (9th Cir. 1962). We are also mindful of the fact that our court has said, "The only elements which need to be present in order to establish a claim for damages under the Civil Rights Act are that the conduct complained of was engaged in under color of state law, and that such conduct subjected the plaintiff to the deprivation of rights, privileges, or immunities secured by the Constitution of the United States." Marshall v. Sawyers, supra, 301 F.2d at 646.

Such a general expression may properly follow the broad sweep of language which constitutes the Civil Rights Act; however, it cannot be literally applied to the exclusion of restrictive rules and precedents of equal force. Certain restrictive rules, serving to modify the broad general rule as to required allegations of the elements necessary to state a claim under the Civil Rights Act, have been announced by this court. See Hoffman v. Halden, 268 F.2d 280 (9th Cir. 1959), Agnew v. City of Compton, 239 F.2d 226 (9th Cir. 1956), Cohen v. Norris, supra.

[5, 6] Applying the principles of the last cited cases to the appellant's complaint, we see that the dismissal would have been improper had it been based solely upon the allegations of the complaint itself, considered separate and apart from the facts which were disclosed by the attached exhibit and, by the appellant himself, "Incorporated by reference" into his allegations. In our view, these specifically alleged and documented facts bring the plaintiff-appellant to an insurmountable barrier, namely, the time honored rule of judicial immunity, a rule which is indispensable to the free and fearless administration of justice. Judges are immune from civil liability for acts done in the course of their official functions, and we have held that the doctrine, so firmly and deeply planted in the field of Anglo-American law, is operative in actions grounded upon the Civil Rights Act. Sires v. Cole, 320 F. 2d 877 (9th Cir. 1963), Harmon v. Superior Court of State of California, 329 F. 2d 154 (9th Cir. 1964), Agnew v. Moody, 330 F. 2d 868 (9th Cir. 1964), Harvey v. Sadler, 331 F. 2d 387 (9th Cir. 1964). Our view is firmly supported by persuasive, if not controlling, precedent, it having been held that the Civil Rights Act did not abolish a legislator's immunity from civil liability for acts done by him in the field where legislators traditionally have power to act. Tenney v. Brandhove, 1951, 341 U.S. 367, 71 S. Ct. 783, 95 L. Ed. 1019. The principle is demanded by every reasonable consideration of public policy and has long

endured. In Yates v. Lansing, 1810, 5 Johns, N.Y. 282, Chief Justice Kent, tracing the doctrine and finding that its origin could be seen at least as early as the time of Edward III, had this to say. "It is to be found in the earliest judicial records, and it has been steadily maintained by an undisturbed current of decisions in the English courts, amidst every change of policy, and through every revolution of their government. A short view of the cases will teach us to admire the widsom of our forefathers, and to revere a principle on which rests the independence of the administration of justice." The Congress has not said that in civil rights cases there may be intrusion upon the rule, and again quoting the learned Chief Justice Kent, "Ought such a sacred principle of the common law, as the one we have been considering, to be subverted, without an express declaration to that effect?"

The Supreme Court of the United States has never retreated from early recognition of the compelling need of the doctrine. It held, in Bradley v. Fisher, 1871, 13 Wall. 335, 20 L. Ed. 646, that the principle of judicial immunity could not be undetermined even by allegations that a judge's actions were motivated by corruption, malice, or other improper considerations. It said "If upon such allegations a judge could be compelled to answer in a civil action for his judicial acts, * * * his office [would] be degraded and his usefulness destroyed * * *"

[7, 8] As the authorities suggest, a judge, acting in his capacity as a private citizen and divorcing himself from his judicial duties, may cast aside his cloak of immunity. The only remaining problem, therefore, with respect to the defendant judges in the case at bar, is related to consideration of whether or not doing the acts for which they are sought to be held responsible in damages, they were acting within the course and scope of their judicial duties. As to the defendant Miller, there is no doubt that he performed, with exactness and promptness and with the utmost protection to plaintiff-appellant, the sole judicial duty with which he was charged as judge of the particular court assigned the responsibility of administering the California law which granted authority for detention and observation under court supervision. We believe, also, that the defendant Nix acted within reasonable limits of the scope of his judicial responsibility. It is true that at the time he initiated the steps which brought about the detention, he was conducting litigation which involved divorce and not lunacy. Nevertheless, it is clear that his actions stemmed directly from the performance of his judicial duties. Subjected to conduct on the part of plaintiff-appellant which, if pursued, might possibly have led to the loss of courtroom decorum and the creation of intolerable disorder, what courses were available? Should the court have adjourned the preceedings or terminated them midway with consequent

impairment and obstruction of the course of justice? Should the judge have punished the plaintiff-appellant summarily for direct contempt and ordered that he be jailed? Had he taken such drastic action with proper procedure, the plaintiff-appellant would have been forced to suffer the indignity of a contemnor without possibility of redress in money damages from the judge. Should the judge be made to suffer because he resorted to the more human and compassionate choice which he took, that of bringing a possibly sick litigant to the immediate attention of competent physicians? We think not.

The defendant bailiff acted at the direction of the judge to whom he was immediately and directly responsible. In so doing, he was a part of the body of the court itself. In Hoffman v. Halden, supra, we held that a jailer or keeper was not liable under the Civil Rights Act for "performing a duty which the law at that time required him to perform." A court's bailiff is required by law to preserve order in the courtroom, to protect the court, and to comply with directions given him by the judge during the course of judicial proceedings. It is alleged that the defendant bailiff here, in signing the petition which alleged the bailiff's belief that appellant was in need of medical care, did so at the express direction of the judge whose arm and agent he then was. In the light of our decision that there can be no valid claim against the judge, the bailiff is entitled to the protection of the judicial immunity which surrounded the whole

court.

[9] With the elimination of the defendant judges and bailiff from the case, claims against the defendant attorneys under the Civil Rights Act cannot be stated. The attorneys were not State officers, and they did not act in conspiracy with a State officer against whom appellant could state a valid claim. It follows that they did not, and could not, commit the alleged wrongful acts "under color of state law or authority"; hence, they are not subject to liability under the Civil Rights Act. Bottone v. v. Lindsley, 170 F. 2d 705 (10th Cir. 1948). Skolnick v. Martin, 317 F. 2d 855 (7th Cir. 1963). Skolnick v. Spolar, 317 F. 2d 857 (7th Cir. 1963), Swift v. Fourth National Bank of Columbus, Georgia, 205 F. Supp. 563 (D. C. M. D. Ga. 1962). See also, Hoffman v. Halden, supra.

Affirmed.

APPENDIX D

CRIDER, TILSON & RUPPE'
548 South Spring Street
Los Angeles, California 90013
MAdison 6-0131

Attorneys for Defendant
HORACE N. FREEDMAN.

LODGED
May 8 1964
Clerk, US
District Court
Southern Dist.
of California
By /s/ Davis
Deputy

FILED
May 12 1964
Clerk, U.S. District
Court Southern Dist.
of California
By /s/ Montague
Deputy

ENTERED
May 12 1964
Clerk, U.S. Dist.
Court Southern
Dist. of California
By /s/ Montague
Deputy

IN THE UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF CALIFORNIA

CENTRAL DIVISION

ELDON O. HALDANE, Plaintiff, vs WILHELMINA HELEN KING CHAGNON, HORACE N. FREEDMAN, LLOYD S. NIX, ALLEN MILLER, WILFRED H. TOMLIN, Defendants.	)	No. 64-293-CC JUDGMENT UPON DEFENDANTS' MOTION TO DISMISS COMPLAINT.

The motion of the defendants, WILHELMINA HELEN KING CHAGNON and HORACE N. FREEDMAN, to dismiss plaintiff's complaint having come on regularly for hearing and said matter having been argued, and it appeared from the presentation by the plaintiff that he would be unable to allege additional facts to sustain his cause of action, and the Court having found that the action filed does not state a claim upon which relief can be granted, and, in particular, that defendants, LLOYD S. NIX and ALLEN MILLER, acting in their judicial capacities as Judges of the Superior Court for the County of Los Angeles, State of California, are immune from liability, and defendant, WILFORD H. TOMLIN, a Deputy Sheriff of the County of Los Angeles, was acting in his official capacity as bailiff under the direction and control of defendants, LLOYD S. NIX and ALLEN MILLER; and it is clear from the

allegations that defendants, WILHELMINA HELEN KING CHAGNON and HORACE N. FREEDMAN, were not acting under color of authority of any law;

NOW, THEREFORE, IT IS ORDERED, ADJUDGED AND DECREED that said complaint be and is hereby dismissed with prejudice as to all defendants.

IT IS FURTHER ORDERED THAT A COPY OF THIS JUDGMENT be served by United States mail upon plaintiff herein.

Dated: this 12 day of May, 1964.

/s/ Charles H. Carr
United States District Judge

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IN THE

Supreme Court of the United States

October Term, 1967
No. 1073

ELDON O. HALDANE,

Petitioner,

vs.

WILHELMINA HELEN KING CHAGNON; HORACE N. FREEDMAN; LEONARD S. SANDS; GORDON THOMPSON; WILFRED H. TOMLIN; ALBERT D. MATTHEWS,

Respondents.

On Petition for a Writ of Certiorari to the United States Circuit Court of Appeals for the Ninth Circuit.

BRIEF FOR RESPONDENTS CHAGNON AND FREEDMAN IN OPPOSITION.

Opinions Below.

The *per curiam* opinion of the Court of Appeals for the Ninth Circuit, from which Petitioner is purporting to seek certiorari, is shown in the Petition as Appendix A. At this writing it has not yet been reported in the printed archives. The *actual* opinion of the Court of Appeals for the Ninth Circuit upon which Petitioner really is seeking certiorari (*Haldane v. Chagnon*) is reported at 345 F. 2d 601 (1965).

Jurisdiction.

The jurisdictional requisites are adequately set forth in the Petition.

Question Presented.

Whether when a complaint is filed in a district court against these respondents and others, and then dismissed, and the dismissal affirmed on appeal, the plaintiff may thereafter, two years later, file an almost identical complaint against these respondents (and others); yet now raise objection before this Honorable Court because the later complaint is again dismissed by the district court—on the grounds at bar by Statute of Limitations, *res judicata* and *stare decisis*—and the second dismissal is affirmed by the Ninth Circuit on the same grounds.

Statement.

On *March 5, 1964* Petitioner filed his original complaint, alleging therein that his civil rights had been violated when in 1961 a judge of the Los Angeles Superior Court had had him temporarily committed pending a psychiatric hearing; from which proceedings Petitioner was ultimately released, as not so mentally ill as to require confinement.

In his complaint Petitioner named as defendants: the committing judge; another judge who had referred the matter to the committing judge; the latter's clerk; and respondents Chagnon and Freedman.

As to respondents Chagnon and Freedman, Petitioner alleged (as is true) that they were attorneys at law, in private practice; and further alleged that they had "induced" the judges' actions, by suggesting the need for a psychiatric hearing.

The district court dismissed the complaint as to all the defendants; and on appeal the Ninth Circuit affirmed, in *Haldane v. Chagnon,* 345 F. 2d 601 (App C of Petition).

Thereafter, on *January 23, 1966*—Petitioner filed another complaint in the same district court; in which (although he omitted some defendants previously charged, and added others not previously named) he made virtually the same allegations against respondents Chagnon and Freedman.

Respondents Chagnon and Freedman moved to dismiss this complaint; one ground being bar by the applicable Statute of Limitations: the alleged "overt acts" of these respondents in "instigating" the judges' actions complained of were averred to have been committed on *March 8, 1961*—almost five years before the filing of the complaint—it being settled law that in respect to alleged civil rights violations instituted in the California Federal Courts the Statute of Limitations is *three years* (*Smith v. Cremins,* 308 F. 2d 187 (9 Cir. 1962); and *Lambert v. Conrad,* 308 F. 2d 571 (9 Cir. 1962).

These respondents also moved to dismiss the 1966 complaint on the grounds of *res judicata* and *stare decisis:* a final adjudication by an appellate court of the same facts involving these same parties, in *Haldane v. Chagnon,* 345 F. 2d 601.

The district court dismissed the *second* complaint in favor of these respondents (and the others) on the grounds urged; and the Ninth Circuit affirmed by a *per curiam* opinion (App. B of Petition); saying *only* the following:

> "The district court's order dismissing with prejudice appellant's complaint for damages under the Civil Rights Act 42 USC §1985(3) was required by this court's ruling in *Haldane v. Chagnon,* 345 F. 2d 601 (9th Cir. 1965). That decision binds this panel. The judgment is affirmed."

ARGUMENT.

I.

THE PETITION IS BARRED BY THE FAILURE TIMELY TO SEEK CERTIORARI.

Petitioner may superfically also purport to be seeking certiorari from said *per curiam* decision of the Ninth Circuit filed December 20, 1967; but *it is patently obvious from an examination of his Petition that he is really seeking certiorari from the earlier, 1965 decision, Haldane v. Chagnon,* 345 F. 2d 601.* *As Petitioner himself says* (emphases supplied):

> "The [current] memorandum opinion of the Circuit Court of Appeals is unreported . . . *that dismissal was based on Haldane v. Chagnon,** reported in 345 F. 2d 601. . . . (Pet. p. 2).
>
> * * *
>
> "*The decisions* of the court below *in the instant case and in Haldane v. Chagnon,* 345 F. 2d 601 . . . are directly and irreconcilably in conflict with (citations) (Pet. p. 5)."

It is therefore manifestly obvious that *Petitioner should have sought a writ of certiorari long ago;* within the requisite ninety days of the entry of judgment in *Haldane v. Chagnon,* 345 F. 2d 601, as is required by Rule 22 of this Honorable Court; *and* that *Petitioner's present application for a writ of certiorari is out of time, and should be denied.*

---

*Logically, since the 1967 *per curiam* decision is entirely evolved from mere reliance on the findings in the 1965 decision, there cannot be, and there is not, any actual ruling *on the merits* in the *later* opinion; only the earlier decision concerned itself with the actual merits of the cause.

II.

THE PETITION IS LIKEWISE BARRED BY THE FAILURE TO COMPLY WITH RULE 23(e).

Rule 23(e) of this Honorable Court requires: "A concise statement of the case containing the facts material to the consideration of the questions presented."

Nevertheless, a careful reading of the Petition herein fails to disclose anything more than a few generalized emotional sentences of remonstration, couched in dramatic cliche—and *totally devoid of any facts.*

Indeed, although Petitioner has purported to seek the writ of certiorari against respondents Chagnon and Freedman (amongst others) he makes not one reference to these respondents by name in the body of his Petition; and relates not a single fact respecting *their* actions in relation to Petitioner or his civil rights.

Patently, therefore, the Petition should be denied, under Rule 23, subd 4, for "the failure . . . to present . . . whatever is essential to a ready and adequate understanding of the points requiring consideration."

III.

THE DECISION BELOW IS CLEARLY CORRECT. THERE IS NO CONFLICT OF DECISION. THERE IS NO IMPORTANT QUESTION OF FEDERAL LAW.

Yet even if the Petition be actually judged on its merits in relation to the 1967 *per curiam* decision (as this decision relies on the earlier opinion) it is still crystal clear that *no valid basis exists for the granting of a writ of certiorari; for all of the following reasons:*

1. No conflict of decision.

Contrary to what is stated in the Petition, page 5, neither of the two decisions, *Haldane v. Chagnon* actually *is* "directly and irreconcilably in conflict" with those cases cited in the Petition. *In truth, those cases (thus cited) are not even remotely in point, factually.*

Counsel for respondents Chagnon and Freedman have carefully examined every case cited in the Petition, and have observed that not a single one involves an action brought against an attorney in private practice for the alleged suggestion by the attorney to a judge that a psychiatric hearing, or even a psychiatric confinement, might be advisable.

Actually, it is settled law that no cause of action for an alleged deprivation of civil rights can lie against attorneys (like these respondents) in private practice; in no manner acting as state functionaries under color of law; for the mere suggestion to a judge that psychiatric court proceedings may appear practical—as the result of which actual psychiatric court proceedings are held under the exclusive control of a duly constituted judge and other public officials (see: *Byrne v. Kysar,* 347 F. 2d 734 (7 Cir. 1965) *cert. denied* in 383 U.S. 913; *Meier v. State Farm Mutual Auto Ins. Co.,* 356 F. 2d 504 (7 Cir. 1966) *cert. denied* in 385 U.S. 875; *Kenney v. Fox,* 232 F. 2d 288 (6 Cir. 1956); *Whittington v. Johnston,* 201 F. 2d 801 (5 Cir. 1953); *Cooper v. Wilson,* 309 F. 2d 153 (6 Cir. 1962); *Skolnick v. Martin* and *Skolnick v. Spolar,* 317 F. 2d 855, and 857, respectively. (7 Cir. 1963.)

2. The action relating to the current per curiam decision is barred by the applicable three-year Statute of Limitations:

Smith v. Cremins, 308 F. 2d 187, 98 A.L.R. 2d 1160 (9 Cir. 1962);

Lambert v. Conrad, 308 F. 2d 571 (9 Cir. 1962).

---

3. The action relating to the current per curiam decision is barred against respondents Chagnon and Freedman by the doctrine of res judicata.

Having once pursued his earlier complaint against these respondents to final judgment, petitioner then filed a second complaint against these same respondents, alleging the same allegedly overt acts that were averred in the earlier complaint. The second action was thereupon barred.

Rhodes v. Meyer, 334 F. 2d 709 (8 Cir. 1964) *cert denied* in 379 U.S. 915 and 383 U.S. 939;

Crawford v. Zeitler; 326 F. 2d 119 (6 Cir. 1964).

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4. The action relating to the current per curiam opinion is barred by the doctrine of stare decisis.

Petitioner pursued his earlier action to final judgment by an ultimate decision on appeal. Then he started the same action all over again. The second action is barred under the rule of *stare decisis.*

Rhodes v. Meyer, 334 F. 2d 709.

Conclusion.

For the foregoing reasons it is respectfully submitted that the within Petition for a writ of certiorari should be denied.

Respectfully submitted,

JOSEPH W. JARRETT,
Counsel for Respondents
Chagnon and Freedman.

Of Counsel:
JARRETT & WOODHEAD,
BRILL, HUNT, DEBUYS & BURBY, and
ABE MUTCHNIK.

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IN THE

Supreme Court of the United States

October Term, 1967
No. 1073

ELDON O. HALDANE,

Petitioner,

vs.

WILHELMINA HELEN KING CHAGNON; HORACE N. FREEDMAN; LEONARD S. SANDS; GORDON THOMPSON; WILFRED H. TOMLIN; ALBERT D. MATTHEWS,

Respondents.

On Petition for Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit.

Brief for Respondent Gordon Thompson in Opposition.

Statement.

Petitioner instituted the within action in the United States District Court for the Southern District of California, Central Division, on January 23, 1966. In his complaint, he alleged that all of the named respondents had participated in a conspiracy to deprive him of equal protection of the laws in violation of 42 U.S.C. §1985(3), (The Civil Rights Act), and the Fourteenth Amendment of the United States Constitution.

With regard to respondents Chagnon, Freedman, and Tomlin, petitioner alleges, among other things, that during divorce proceedings initiated by his former wife in 1961, said respondents conspired to falsely imprison him pursuant to California Welfare and Institutions Code, §5041 *et seq.* In 1964 petitioner brought an action under the same Civil Rights Act against said respondents, and others, and alleged the same events; however, petitioner did not include as defendants Gordon Thompson, Leonard S. Sands, or Albert Matthews. The District Court in that action dismissed the complaint for failure to state a claim upon which relief could be granted, and the Ninth Circuit Court of Appeals affirmed the decision. *Haldane v. Chagnon,* 345 F. 2d 601 (9th Cir. 1965).

The within action is basically a repetition of Mr. Haldane's previous lawsuit; however, certain additional facts and defendants have been added in an apparent attempt to avoid the problems of *res judicata.* Specifically, the additional facts which petitioner has alleged in order to include Thompson and Sands are set forth in Paragraphs 18, 20, 21 and 23 of the complaint. In Paragraph 18, petitioner describes "overt acts" 8 and 9 as follows:

> "Defendants Sands and Thompson substituted themselves into the case [the aforementioned divorce proceedings] at the instigation of Chagnon and Freedman in lieu of Chagnon as attorney of record with full personal knowledge of the felonies committed on the person of plaintiff while the marriage was in full force and effect . . ."

In Paragraph 20, petitioner alleges "overt acts" Nos. 10 and 11 where respondents, Thompson and Sands

> "Did demand and receive in Department 8 of Los Angeles Superior Court judgments for thousands of dollars as attorneys fees against this plaintiff, which sums were later modified drastically downward by the intermediate Court in *Haldane vs. Haldane,* 210 Cal. App. 2d 587."

In Paragraph 21, petitioner describes "overt acts" No. 12 in which

> "Defendants Sands and Thompson recorded in the Official Records of Los Angeles County, Document 5162, Book M947, Pages 651-654 inclusive, being judgment lien of $1,500.00 principal less $120.00 credits before the modifications in *Haldane vs. Haldane,* 210 Cal. App. 2d 587 . . ."

In Paragraph 23, petitioner alleges "overt acts" No. 13 in which Sands and Thompson procured from Judge Roger Alton Pfaff a "purported final decree based on a false affidavit" in the divorce action.

Thus, the overt acts by which petitioner attempts to connect respondents Sands and Thompson with alleged conspiracy consists of:

(1) Substitution of themselves as attorneys for Mrs. Haldane in the divorce proceedings after the alleged false imprisonment had already taken place;

(2) Obtaining a judgment against Mr. Haldane for attorneys' fees;

(3) Recordation of a judgment lien for attorneys' fees prior to the appeal to the California District Court of Appeal;

(4) Obtaining a final decree in the divorce suit.

After petitioner filed his complaint in the within action, Motions to Dismiss the Complaint for failure to state a claim upon which relief could be granted were filed by all defendants. The Motions were granted by the District Court with prejudice as to all defendants, and petitioner filed an appeal to the United States Court of Appeals for the Ninth Circuit. The Ninth Circuit, in a *Per Curiam* decision, affirmed the judgment of dismissal, stating that "The District Court's order dismissing with prejudice appellants complaint for damages under the Civil Rights Act, 42 U.S.C. 1985(3) was required by this Court's ruling in *Haldane vs. Chagnon* 345 F. 2d 601 (9th Cir., 1965). That decision binds this panel."

Petitioner now seeks from this Court a Writ of Certiorari to the Ninth Circuit Court of Appeals.

ARGUMENT.

1. Rule 19 of the Revised Rules of the Supreme Court of the United States reads, in part, as follows:

> "A review on Writ of Certiorari is not a matter of right, but of sound judicial discretion, and will be granted only where there are special and important reasons therefore. . . ."

Rule 23(4) reads as follows:

> "The failure of a petitioner to present with accuracy, brevity, and clearness whatever is essential to a ready and adequate understanding of the points requiring consideration will be a sufficient reason for denying his petition."

This respondent respectfully submits that the petitioner has failed, in his Petition for Writ of Certiorari, to show any "special and important reasons" for granting a Writ of Certiorari, and has failed to describe with "accuracy, brevity, and clearness whatever is essential to a ready and adequate understanding of the points requiring consideration." In short, the petitioner has failed to advance any cogent reasons, with any degree of clarity whatsoever, for the granting by his Honorable Court of a Writ of Certiorari.

The *Per Curiam* decision of the Ninth Circuit in the within action was based on the decision and holding in the previous Ninth Circuit action, *Haldane v. Chagnon*, 345 F. 2d 601. In said previous action, it was held that State Court Judges could not be sued under the Civil Rights Act, and in particular under 42 U.S.C. §1985-(3), for acts performed within the scope of their authority, because of the doctrine of judicial immunity.

The Court then pointed out that in the case before them, State Court Judges, when ordering petitioner to be detained temporarily for mental examinations pursuant to California Welfare and Institutions Code, Sections 5041 *et seq.* had been acting within the course and scope of their authority, and were therefore immune from suit under the Civil Rights Act for liability for any of said actions.

The Court went on to point out that since, under the doctrine of judicial immunity, the judges could not be sued, neither could attorneys be sued. The Court stated:

> "With the elimination of defendant judges and bailiff from the case, claims against defendant attorneys under the Civil Rights Act cannot be stated. The attorneys were not state officers, and they did not act in conspiracy with a state officer against whom appellant could state a valid claim. It follows that they did not, and could not commit alleged wrongful acts 'under color of state law or authority'; Hence, they were not subject to liability under the Civil Rights Act." 345 F. 2d 601, 604.

It is thus seen that the Ninth Circuit, in both the previous case and in the within action, relied on the doctrine of judicial immunity in denying a right of action against both judges and attorneys under the Civil Rights Act for the alleged wrongful acts. The petitioner has failed to advance any cogent reasons why this application of the doctrine of judicial immunity should be reviewed by this Court. In his "Reasons for Granting Writ" contained in his petition, petitioner has merely made a bold assertion that the "State Court's jurisdic-

tion of all proceedings was lost on March 8, 1961 (citing several cases)". Petitioner does not explain how the state courts lost jurisdiction, nor does he attempt to answer the discussion contained in *Haldane v. Chagnon, supra* at page 604, to the effect that the state court judges were acting entirely within their jurisdiction in ordering mental illness proceedings pursuant to California Welfare and Institutions Code Section 5041 *et seq.*

This honorable Court recently had occasion, in the case of *Pierson v. Ray,* 368 U.S. 547, 87 S. Ct. 1213, 18 L. Ed. 2d 288 (1967) to consider whether the doctrine of judicial immunity was applicable in a situation where a judge was being sued for a violation of the Civil Rights Act, specifically 42 U.S.C. §1983. In holding that the doctrine of judicial immunity was applicable in such a situation, Mr. Chief Justice Warren stated:

> "We find no difficulty in agreeing with the Court of Appeals that Judge Spencer is immune from liability for damages for his role in these convictions. . . . Few doctrines were more solidly established at common law than the immunity of judges from liability for damages for acts committed within their jurisdiction. . . . This immunity applies even when the judge is accused of acting maliciously and corruptly. . . .
>
> "We do not believe that this settled principle was abolished by Section 1983, which makes liable any person who under color of law deprives another person of his civil rights. The legislative record gives no clear indication that Congress meant to abolish wholesale all common law immunities." 386 U.S. 547, 553.

See also the case of *Bradley v. Fisher,* 12 Wall. (80 U.S.) 335, 20 L. Ed. 464 (1871).

2. Petitioner has not advanced any reasons why the decision below should be reconsidered as to this particular respondent. It will be remembered that the "overt acts" of which respondent Thompson is accused consist of substituting himself as an attorney in the divorce proceedings, obtaining a judgment against Mr. Haldane for attorneys' fees, recordation of a judgment lien for attorneys' fees, and obtaining a final decree in the divorce suit. All of these alleged "overt acts" are clearly the activities of an attorney engaged in private litigation. It has been consistently held, at the Court of Appeals level, that acts of attorneys in the course of civil litigation are not actionable under the provisions of the Civil Rights Acts. Thus, in the case of *Skolnick v. Martin,* 317 F. 2d 855 (7th Cir. 1963) at page 857 it was said:

> "Lawyers who participate in the trial of private state court litigation are not state functionaries acting under color of state law within the meaning of the Federal Civil Rights Act."

See also the cases of *Bottone v. Lindsley,* 170 F. 2d 705 (10th Cir. 1948), and *Swift v. Fourth National Bank of Columbus, Georgia,* 205 F. Supp. 563 (USDC MD Ga. 1962).

Petitioner has not attempted in any way in his "Reasons For Granting Writ" to refute these principles, or to call them to the attention of this honorable Court. In fact, petitioner has urged no reasons at all to justify a reconsideration of the decision as to respondent Gordon Thompson.

Conclusion.

For the foregoing reasons, the petition for Writ of Certiorari should be denied.

DONALD W. REES,
Counsel for Respondent,
Gordon Thompson.

Of Counsel:
BOOTH, MITCHEL, STRANGE &
WILLIAN.